

Tilbury 2 Case Team
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Date: 20 December 2018
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Dear Sirs

Planning Act 2008

Application by Port of Tilbury London Limited ('the Applicant') for an Order granting Development Consent for a new port facility ('Tilbury 2') - TRO30003

We act on behalf of RWE Generation UK plc (RWE) in connection with the Examination of the Tilbury 2 Application.

We have received a copy of your letter dated 7 December 2018 and note that the Secretary of State has asked for confirmation as to whether any further agreement has been reached between the parties with regard to the protective provision for the benefit of RWE Generation UK plc (RWE) at Schedule 10, Part 10 of the draft Development Consent Order.

In submissions at the last Deadline of the Examination (deadline 7 - 16 August 2018) RWE confirmed that, subject to a limited number of proposed amendments, it was largely content with the form of protective provision proposed by the Applicant at Schedule 10 Part 10 of revision 5 of its draft DCO (dDCO).

At Deadline 7 the Applicant submitted a further version of the dDCO (revision 6).

Whilst several of the amendments to Schedule 10 Part 10 sought by RWE at Deadline 7 are now reflected in the revision 6 dDCO, the following points remain outstanding.

- 1.1 Proposed amendments to what is now para. 134 (9) of the revision 6 dDCO regarding interference with unloading and loading of vessels within the extended port limits, and the insertion of a new indemnity provision to further protect RWE, have not been included by the Applicant in revision 6.

A copy of RWE's Deadline 7 submission is appended to this letter and you are referred to the commentary at paras. 2.11.1 and 2.11.2 of that submission which provides RWE's reasoning for the amendments. The relevant paragraphs of the RWE version of the protective provision submitted as Appendix 2 at Deadline 7 are paras. 130 (9) and 132.

Proposed provisions dealing with access for abnormal loads and dust management have not been accepted into the Applicant's revision 6 dDCO. RWE's basis for the inclusion of such provisions is set out in its Deadline 7 submission at paras 2.11.4. The relevant paragraphs of the RWE version of the protective provision submitted as Appendix 2 at Deadline 7 are paras. 138 and 139.

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Proposed wording to deal with the potential for interference with RWE's existing rights and interests has not been accepted into the Applicant's revision 6 dDCO. RWE's basis for the inclusion of this provision is set out in its Deadline 7 submission at paras. 2.11.6 and 2.11.7. The relevant paragraphs of the RWE version of the protective provision submitted as Appendix 2 at Deadline 7 are paras. 141 and 143.

Additionally, RWE is not content with insertion of new wording into the revision 6 DCO protective provision at para. 136 (1) '*the retention, maintenance and use of*', which effectively seeks to limit what RWE might obtain a licence for from the Port of London Authority with regard to its existing apparatus which puts RWE in a worse position than under existing arrangements, which the Applicant has previously confirmed it does not wish to interfere with.

It remains RWE's position that these amendments are essential for the protection of RWE and its statutory undertaking and should be incorporated in the final version of the Order, notwithstanding the fact that the application for the Tilbury Energy Centre has been withdrawn. The Tilbury Power Station site is identified in the Thurrock Local Plan for power station development and RWE continues to reserve the site for possible future power station development.

Yours faithfully



Eversheds Sutherland (International) LLP

Enclosure